IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1333 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
MULUBHAI ARJANBHAI BHARVAD & ORS

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Appearance :
MR KC SHAH APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Special Judge and Assistant Sessions Judge, Godhra, District – Panchmahal, on 30th of March, 2005, in Special Case (Atrocity) No. 20 of 2004 whereby all the four respondents i.e. original accused came to be acquitted by the Trial Court for the offences punishable under Sections 325, 323, 504, 506(2), 114 of the Indian Penal Code as well as for the offences punishable under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 As per the brief facts, the incident took place at about 5.00 p.m. at village Veganpur, Taluka – Godhra. The First Information Report came to be filed by one Lilaben Khoparbhai Najrubhai at about 22.45 hours before Godhra Police Station and before PSO Bharatsinh Jesinghbhai, PW-5, as at that juncture, he was in-charge of the Police Station. According to the First Information Report filed by Lilaben, at about 5.00 p.m. , her husband Khoparbhai Najrubhai was doing agricultural work in the filed of her one maternal uncle, named as, Jama Bholiya Rathwa. At that time, all the four accused entered in the field with their cattle i.e. goats for grazing the said goats. Since already plucked

crop was staked in the field, Khoparbhai Najrubhai prevented the accused from entering in the field along with goats. Therefore, the accused got provoked and started giving abuses to Khoparbhai Najrubhai. Out of the accused, accused No.1 Mulubhai Arjanbhai Bharvad came running with a stick and gave blows of said stick to Khoparbhai Najrubhai on his head, and on account of this injury, the skin was fractured. Accused No.1 Mulubhai Arjanbhai Bharvad also gave stick blows to Khoparbhai Najrubhai on hands and legs. In the meantime, mother of the complainant Lilaben, named as Manguben, came there and other accused gave stick blows on right hand thumb of Manguben. When complainant Lilaben and others shouted for help, the accused threatened them that if they were prevented from grazing their cattle, the complainant party would be done to death. Injured Khoparbhai Najrubhai was taken to Government Hospital at Godhra and took treatment. On FIR being registered, investigation was carried out by ASI Samarsinh and thereafter by Dy. S.P. Ashwin Gangaram Chauhan, and a charge sheet came to be filed against all the four accused in the Court of Chief Judicial Magistrate at Godhra, and the case was committed to the Court of Sessions as the same being Special Case. Vide Exhibits 3 to 6, a charge for the above said offences was framed by the Trial Court against all the four accused and each of them pleaded not guilty.

3 Prosecution examined in all seven witnesses. PW-1

Natwarsing Naarsing, is examined as a panch witness at Exh.8; PW-2 Arvindbhai Bhulabhai is examined at Exh. 11 as panch witness while PW-3 complainant Lilaben Khoparbhai is examined at Exh. 12 and PW-4 Khoparbhai Najrubhai is examined at Exh. 14 as injured and eye witnesses PSO Bharatsinh Jesing, who recorded the First Information Report, is examined as PW-5 at Exh. 16; Investigating Officer Dy. S.P. Ashwin Gangaram Chauhan is examined as PW-6 at Exh. 17 and Dr. Rameshchandra Kodarji Chauhan is examined as PW-7 at Exh. 20, who gave treatment to injured Khoparbhai Najrubhai. In addition to this, prosecution also produced on record documentary evidences.

4 On evidence being over, statements of the accused were recorded by the Trial Court under Section 313 of the Code of Criminal Procedure, where the defence was of total denial. After hearing learned APP and the defence in detail, learned Trial Judge came to the above conclusion of acquittal of the accused for the charges levelled against them as aforesaid and, hence, this Appeal by the State.

5 Learned APP Mr. K.C. Shah was heard in detail. We have called for the Record and Proceedings from the Trial Court and we have carefully gone through the Record and Proceedings and the evidence recorded. We have scanned the circumstances of the case independently and have reached to our own independent

findings.

6 This being an acquittal appeal, it is necessary that to interfere with the findings of the Trial Court, the reasons recorded by the Trial Judge for the acquittal must be looked into in detail, and then, if the High Court is not concurring with the findings recorded by the Trial Court for the acquittal, the High Court must assign reasons for the same. Therefore, it is necessary that it must be seriously and carefully examined that what reasons are recorded by the Trial Court for the acquittal. We found on scrutiny of the judgment that in paras 14, 16 and 17 of its judgment, the Trial Court has recorded detailed reasons for acquitting the accused of the charges levelled against them. Mostly, the Trial Court has come to the conclusion that witness Lilaben Khoparbhai – PW-3 posed herself to be an eye witness, appears to have stated so falsely because the circumstances indicated that she was not present when the incident took place. The learned Trial Judge has also observed that injured witness PW-4 Khoparbhai Najrubhai at Exh. 14 has deposed altogether a different story than narrated by PW-3 Lilaben Khoparbhai in her First Information Report as well as in her deposition before the court. The learned Trial Court observed that the whole case was hinging on the evidence of these two witnesses and their evidence was not found reliable and credit worthy to bring home the guilt of the accused.

7 We have undertaken our own independent assessment of the evidence recorded during trial. Though the prosecution through the evidence of PW-7 Dr. Rameshchandra Kodarji Chauhan proved that injured Khoparbhai Najrubhai received in all four injuries simple in nature, the certificate issued by the Doctor on 4th of February, 2003 indicates that Khoparbhai Najrubhai was examined by him on 12.01.2003 wherein in history Khoparbhai stated that he was assaulted by lakadi. He had four injuries – (i) CLW of parietal region; (ii) CLW inner lip mouth; (iii) multiple linear marked abrasions on frontal thigh and (iv) abrasions on both knee joint. Injuries were simple and could be caused by hard and blunt substance.

8 Now appreciating the evidence of injured witness Khoparbhai, he has stated in his deposition something else than what is stated by the complainant Lilaben in First Information Report and in her deposition. Khoparbhai stated before the court that Jamabhai was his uncle. The incident took place before three years in the evening in his field. Crop of `tuver' was there and they were plucking the said crop. At the time of incident, with him, his uncle Jamabhai and his aunt Rayali both were at the field, while his wife Lilaben (complainant) was at home. At that time, accused No.3 Makubhai Karambhai Bharwad came in his field with his goats and he warned accused No.3 that there was a

plucked crop of `tuver' in the field and further warned not to enter in the said field for grazing goats. Thereupon Karamabhai fled from the field leaving his goats and came with a group of other Bharwads along with accused No.1 Mulubhai Arjanbhai Bharwad and accused No.2 Vaghabhai Vashrambhai Bharward and the group was saying that the hands and legs of the injured Khoparbhai should be broken. Injured Khoparbhai further deposed that he was threatened by the group because he belonged to Rathwa caste. He deposed that the group further threatened him to kill, therefore, he ran away from the field and went to his house and thereafter came again to his field. The group was present and someone from the said group gave blows of sticks on his head, but he did not know that who inflicted that blow. Thereafter he became unconscious and his wife Lilaben filed the complaint. Police had recorded his statement and in his statement he had stated that the accused had sticks with iron rings. He further deposed that Manguben happened to be his mother and she also received injury on left thumb of the hand.

9 Now considering the evidence of only eye witness and injured person Khoparbhai Najrubhai, it becomes clear that the prosecution case, which is disclosed through First Information Report and through the evidence of Lilaben, stands falsified for the simple reason that the whole version given by Lilaben in the FIR and in her deposition before the Court, as stated above, is

different than what is stated by Khoparbhai Najrubhai, vide Exhibit – 14. We find that witness Khoparbhai Najrubhai, who is eye witness and injured witness, has not been declared hostile by the prosecution, meaning thereby that, the version which he deposed before the court was the version he deposed before the police, and according to the version of Khoparbhai Najrubhai, the only eye witness Lilaben was not present at the time of the incident, while she, in First Information Report and before the court, deposed that she was present at the place of incident and accused No.1 gave blows of sticks upon her husband.

10 Thus, when we carefully scrutinized the evidence of these two witnesses, the contradictions in the prosecution case is crystal clear, which goes to the root of the prosecution case. It becomes also clear that no reliance can be placed on the deposition of one of the eye witnesses i.e. Lilaben, while injured witness Khoparbhai Najrubhai narrates the incident in a different manner, wherein the role of the present respondents becomes doubtful, particularly when Khoparbhai Najrubhai stated that he did not know who inflicted the blows of sticks upon him.

11 Irrespective of the above contradictions and state of affairs of the evidence of the prosecution, which destroys of the prosecution case, it must be noted that, other witnesses i.e. Jamabhai and his wife and the injured Manguben were not

examined by the prosecution. Not only that, but as aforesaid, Khoparbhai Najurbhai has not been declared hostile by the prosecution. Thus, detailed reasons are given by the Trial Court in his judgment, as aforesaid, wherein it was also observed by the Trial Court that there were material contradiction as to the place of offence, as according to Lilaben, the incident took place in the field of her maternal uncle Jamabhai while Khoparbhai Najurbhai categorically stated that the incident occurred in his field where his uncle Jamabhai and aunt Rayali were present.

12 On our independent assessment of the evidence recorded, we also come to the finding that the prosecution has failed to bring home the guilt of the accused, and other witnesses are not important to decide the issue as who caused injuries to PW-4 Khoparbhai Najurbhai. Therefore, the question would not arise as to scrutinize the grounds and reasonings given by the Trial Court for acquitting the accused as we also on independent appreciation of evidence come to the same conclusion. Interference, therefore, in the judgment and order would not at all be justified in this acquittal Appeal.

13 In the result, this Appeal stands dismissed.

(J. R. VORA, J.)

(SHARAD D DAVE, J.)

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